

Assembly Bill No. 2165

Passed the Assembly August 29, 2012

Chief Clerk of the Assembly

Passed the Senate August 28, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 2827.10 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2165, Hill. Net energy metering: eligible fuel cell customer-generators.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. Existing law, relative to private energy producers, requires every electrical corporation to make available to an eligible fuel cell customer-generator, as defined, a standard contract or tariff for net energy metering on a first-come-first-served basis until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation, for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation, for an electrical corporation with a peak demand of 10,000 megawatts or below. Existing law additionally limits the combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations in the state to not more than 112.5 megawatts.

This bill would revise the definition of an eligible fuel cell customer-generator to require that the customer be physically located within the service territory of the electrical corporation and receive bundled service, distribution service, or transmission service from the electrical corporation. In place of the existing maximum megawatt limitations upon an electrical corporation's obligation to offer the tariff, the bill would require the electrical corporation to make the tariff available until the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff reaches a level equal to its proportionate share of a statewide limitation of 500 megawatts cumulative rated generation capacity, calculated

as prescribed. The bill would authorize the commission, in order to continue the growth of the market for onsite electric generation using fuel cells, to review and incrementally raise this limitation on the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff. The bill would require the commission to authorize an electrical corporation to charge a customer a fee based on the cost to the utility associated with providing interconnection inspection services for that customer. The bill would provide that no fuel cell electrical generating facility is eligible for the tariff unless it commences operation prior to January 1, 2015, unless this eligibility commencement date is extended by statute. The bill would provide that the tariff remains in effect for an eligible fuel cell electrical generating facility that commences operation pursuant to the tariff prior to January 1, 2015.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the bill expands the duties of an electrical corporation in offering net energy metering and an order of the commission would be required to implement these requirements, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would incorporate additional changes in Section 2827.10 of the Public Utilities Code, proposed by SB 594, to be operative only if SB 594 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 2827.10 of the Public Utilities Code is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) “Electrical corporation” means an electrical corporation, as defined in Section 218.

(2) “Eligible fuel cell electrical generating facility” means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant’s operation or its energy conversion.

(3) (A) “Eligible fuel cell customer-generator” means a customer of an electrical corporation that meets all the following criteria:

(i) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator’s own electrical requirements.

(ii) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(iii) Uses technology the commission has determined will achieve reductions in emissions of greenhouse gases pursuant to subdivision (b), and meets the emission requirements for eligibility for funding set forth in subdivision (c), of Section 379.6.

(B) For purposes of this paragraph, a person or entity is a customer of the electrical corporation if the customer is physically located within the service territory of the electrical corporation and receives bundled service, distribution service, or transmission service from the electrical corporation.

(4) “Net energy metering” means measuring the difference between the electricity supplied through the electrical grid and the difference between the electricity generated by an eligible fuel cell electrical generating facility and fed back to the electrical grid over a 12-month period as described in subdivision (e). Net energy metering shall be accomplished using a time-of-use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible fuel cell customer-generator is not

capable of measuring the flow of electricity in two directions, the eligible fuel cell customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a time-of-use meter.

(b) (1) Every electrical corporation, not later than March 1, 2004, shall file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Subject to the limitation in subdivision (f), every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff reaches a level equal to its proportionate share of a statewide limitation of 500 megawatts cumulative rated generation capacity served under this section. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

(2) To continue the growth of the market for onsite electric generation using fuel cells, the commission may review and incrementally raise the limitation established in paragraph (1) on the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff in paragraph (1).

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical corporation's service territory, preference shall be given to facilities that, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) (1) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand

charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting this section, and shall not form a part of net energy metering tariffs.

(2) The commission shall authorize an electrical corporation to charge a fuel cell customer-generator a fee based on the cost to the utility associated with providing interconnection inspection services for that fuel cell customer-generator.

(e) The net metering calculation shall be made by measuring the difference between the electricity supplied to the eligible fuel cell customer-generator and the electricity generated by the eligible fuel cell customer-generator and fed back to the electrical grid over a 12-month period. The following rules shall apply to the annualized metering calculation:

(1) The eligible fuel cell customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible fuel cell electrical generating facility with an electrical corporation, and at each anniversary date thereafter, be billed for electricity used during that period. The electrical corporation shall determine if the eligible fuel cell customer-generator was a net consumer or a net producer of electricity during that period. For purposes of determining if the eligible fuel cell customer-generator was a net consumer or a net producer of electricity during that period, the electrical corporation shall aggregate the electrical load of the eligible fuel cell customer-generator under the same ownership. Each aggregated account shall be billed and measured according to a time-of-use rate schedule.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electrical corporation exceeds the electricity generated by the eligible fuel cell customer-generator during that same period, the eligible fuel cell customer-generator is a net electricity consumer and the electrical corporation shall be owed compensation for the eligible fuel cell customer-generator's net kilowatthour consumption over that same period. The compensation owed for the eligible fuel cell customer-generator's consumption shall be calculated as follows:

(A) The generation charges for any net monthly consumption of electricity shall be calculated according to the terms of the tariff to which the same customer would be assigned to or be eligible for if the customer was not an eligible fuel cell customer-generator. When the eligible fuel cell customer-generator is a net generator during any discrete time-of-use period, the net kilowatthours produced shall be valued at the same price per kilowatthour as the electrical corporation would charge for retail kilowatthour sales for generation, exclusive of any surcharges, during that same time-of-use period. If the eligible fuel cell customer-generator's time-of-use electrical meter is unable to measure the flow of electricity in two directions, paragraph (4) of subdivision (a) shall apply. All other charges, other than generation charges, shall be calculated in accordance with the eligible fuel cell customer-generator's applicable tariff and based on the total kilowatthours delivered by the electrical corporation to the eligible fuel cell customer-generator. To the extent that charges for transmission and distribution services are recovered through demand charges in any particular month, no standby reservation charges shall apply in that monthly billing cycle.

(B) The net balance of moneys owed shall be paid in accordance with the electrical corporation's normal billing cycle.

(3) At the end of each 12-month period, where the electricity generated by the eligible fuel cell customer-generator during the 12-month period exceeds the electricity supplied by the electrical corporation during that same period, the eligible fuel cell customer-generator is a net electricity producer and the electrical corporation shall retain any excess kilowatthours generated during the prior 12-month period. The eligible fuel cell customer-generator shall not be owed any compensation for those excess kilowatthours.

(4) If an eligible fuel cell customer-generator terminates service with the electrical corporation, the electrical corporation shall reconcile the eligible fuel cell customer-generator's consumption and production of electricity during any 12-month period.

(f) No fuel cell electrical generating facility shall be eligible for the tariff unless it commences operation prior to January 1, 2015, unless a later enacted statute, that is chaptered before January 1, 2015, extends this eligibility commencement date. The tariff shall remain in effect for an eligible fuel cell electrical generating facility that commences operation pursuant to the tariff prior to January

1, 2015. A fuel cell customer-generator shall be eligible for the tariff established pursuant to this section only for the operating life of the eligible fuel cell electrical generating facility.

SEC. 1.5. Section 2827.10 of the Public Utilities Code is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) “Electrical corporation” means an electrical corporation, as defined in Section 218.

(2) “Eligible fuel cell electrical generating facility” means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant’s operation or its energy conversion.

(3) (A) “Eligible fuel cell customer-generator” means a customer of an electrical corporation that meets all the following criteria:

(i) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with the electrical grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator’s own electrical requirements.

(ii) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(iii) Uses technology the commission has determined will achieve reductions in emissions of greenhouse gases pursuant to subdivision (b), and meets the emission requirements for eligibility for funding set forth in subdivision (c), of Section 379.6.

(B) For purposes of this paragraph, a person or entity is a customer of the electrical corporation if the customer is physically located within the service territory of the electrical corporation and receives bundled service, distribution service, or transmission service from the electrical corporation.

(4) “Net energy metering” means measuring the difference between the electricity supplied through the electrical grid and the difference between the electricity generated by an eligible fuel cell electrical generating facility and fed back to the electrical grid over a 12-month period as described in subdivision (e). Net energy metering shall be accomplished using a time-of-use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible fuel cell customer-generator is not capable of measuring the flow of electricity in two directions, the eligible fuel cell customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a time-of-use meter.

(b) (1) Every electrical corporation, not later than March 1, 2004, shall file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Subject to the limitation in subdivision (f), every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff reaches a level equal to its proportionate share of a statewide limitation of 500 megawatts cumulative rated generation capacity served under this section. The proportionate share shall be calculated based on the ratio of the electrical corporation’s peak demand compared to the total statewide peak demand.

(2) To continue the growth of the market for onsite electric generation using fuel cells, the commission may review and incrementally raise the limitation established in paragraph (1) on the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff in paragraph (1).

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical corporation’s service territory, preference shall be given to facilities that, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations

or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) (1) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting this section, and shall not form a part of net energy metering tariffs.

(2) The commission shall authorize an electrical corporation to charge a fuel cell customer-generator a fee based on the cost to the utility associated with providing interconnection inspection services for that fuel cell customer-generator.

(e) The net metering calculation shall be made by measuring the difference between the electricity supplied to the eligible fuel cell customer-generator and the electricity generated by the eligible fuel cell customer-generator and fed back to the electrical grid over a 12-month period. The following rules shall apply to the annualized metering calculation:

(1) The eligible fuel cell customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible fuel cell electrical generating facility with an electrical corporation, and at each anniversary date thereafter, be billed for electricity used during that period. The electrical corporation shall determine if the eligible fuel cell customer-generator was a net consumer or a net producer of electricity during that period. For purposes of determining if the eligible fuel cell customer-generator was a net consumer or a net producer of electricity during that period, the electrical corporation shall aggregate the electrical load of the meters located on the property where the eligible fuel cell electrical generation facility is located and on all property adjacent or contiguous to the property on which the facility is located, if those properties are solely owned, leased, or rented by the eligible fuel cell

customer-generator. Each aggregated account shall be billed and measured according to a time-of-use rate schedule.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electrical corporation exceeds the electricity generated by the eligible fuel cell customer-generator during that same period, the eligible fuel cell customer-generator is a net electricity consumer and the electrical corporation shall be owed compensation for the eligible fuel cell customer-generator's net kilowatthour consumption over that same period. The compensation owed for the eligible fuel cell customer-generator's consumption shall be calculated as follows:

(A) The generation charges for any net monthly consumption of electricity shall be calculated according to the terms of the tariff to which the same customer would be assigned to or be eligible for if the customer was not an eligible fuel cell customer-generator. When the eligible fuel cell customer-generator is a net generator during any discrete time-of-use period, the net kilowatthours produced shall be valued at the same price per kilowatthour as the electrical corporation would charge for retail kilowatthour sales for generation, exclusive of any surcharges, during that same time-of-use period. If the eligible fuel cell customer-generator's time-of-use electrical meter is unable to measure the flow of electricity in two directions, paragraph (4) of subdivision (a) shall apply. All other charges, other than generation charges, shall be calculated in accordance with the eligible fuel cell customer-generator's applicable tariff and based on the total kilowatthours delivered by the electrical corporation to the eligible fuel cell customer-generator. To the extent that charges for transmission and distribution services are recovered through demand charges in any particular month, no standby reservation charges shall apply in that monthly billing cycle.

(B) The net balance of moneys owed shall be paid in accordance with the electrical corporation's normal billing cycle.

(3) At the end of each 12-month period, where the electricity generated by the eligible fuel cell customer-generator during the 12-month period exceeds the electricity supplied by the electrical corporation during that same period, the eligible fuel cell customer-generator is a net electricity producer and the electrical corporation shall retain any excess kilowatthours generated during

the prior 12-month period. The eligible fuel cell customer-generator shall not be owed any compensation for those excess kilowatthours.

(4) If an eligible fuel cell customer-generator terminates service with the electrical corporation, the electrical corporation shall reconcile the eligible fuel cell customer-generator's consumption and production of electricity during any 12-month period.

(f) No fuel cell electrical generating facility shall be eligible for the tariff unless it commences operation prior to January 1, 2015, unless a later enacted statute, that is chaptered before January 1, 2015, extends this eligibility commencement date. The tariff shall remain in effect for an eligible fuel cell electrical generating facility that commences operation pursuant to the tariff prior to January 1, 2015. A fuel cell customer-generator shall be eligible for the tariff established pursuant to this section only for the operating life of the eligible fuel cell electrical generating facility.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 2827.10 of the Public Utilities Code proposed by both this bill and Senate Bill 594. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 2827.10 of the Public Utilities Code, and (3) this bill is enacted after Senate Bill 594, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2012

Governor